IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
L.P.A. No. 154/07 Writ Petition No.2767/1996.

Sharad Balaji Mankar vs. Presiding Officer, School Tribunal, Amravati Division, Amravati.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande & R.V.More,JJ
DATE : 30.7.2007

Heard Mr. Anil Mardikar, learned counsel for appellant.

2. By this Letters Patent Appeal the appellant takes exception to the Judgment and order dated 6.11.2006 passed by the learned Single Judge dismissing the Writ Petition No. 2767/96 filed by the appellant. The appellant was initially appointed by respondent no. 1 from 8.1.1992 as Jr. College Lecturer in history subject. Thereafter he was appointed with a break in service. According to the appellant he had completed his probation period of two years. Since the appellant's services were terminated he filed appeal bearing Appeal No. 89/94-A before the School Tribunal, Amravati challenging his termination. The appeal was contested by the respondents. According to the respondents the

post of the lecturer for which the appellant was appointed was reserved for Scheduled Caste/ Scheduled Tribe during the year 1991-92 and since no candidate of reserved category was available for appointment, the appellant was appointed under Rule 9(9)(a) of the Maharashtra Employees of Private Schools (conditions of Service) Regulation Act, 1977 for a specific period. Thereafter also the appellant was appointed during the period 1992-93 and 1993-94 since no eligible candidate was available in spite of advertisement issued by respondent no.1. It was further the case of the respondents that since the candidate belonging to SC/ST category was available the services of the appellant were terminated. It was the case of the appellant before the Tribunal that since he belongs to Other Backward Class category he was entitled to be appointed in the vacancy which was reserved for SC/ST candidate since the candidate belonging to SC/ST was not available. The Tribunal did not find any favour with the submissions made on behalf of the appellant and consequently dismissed the appeal. However, the Tribunal passed interim order staying the termination order during the pendency and final disposal of the appeal which was vacated at the time of final disposal of the appeal. In Writ Petition preferred by the appellant against the order passed by the School Tribunal the learned Single Judge

held that the appellant herein had not pleaded in the Memo of Appeal that he was rightly selected against the reserved category. The learned Single Judge further observed that the appellant had no where stated in the Memo of Appeal that though the vacancy was reserved for SC/ST category, since he was belonging to Other Backward Class category he could have been legally appointed in the post. On the contrary, the learned Single Judge observed that the Management had expressly pleaded that the appellant was not belonging to reserved category and he was appointed on temporary basis for the academic session 1992-93 only. In the absence of any specific pleading in the Memo of Appeal, the leaned Single Judge held that the appellant was not entitled to be appointed in the post reserved for Scheduled Caste/ Scheduled Tribes category and consequently dismissed the Writ Petition.

3. Mr. Mardikar, the learned counsel for the appellant submitted that since the appellant belongs to Other Backward Class category he could not have been terminated and was entitled to be appointed in the vacancy reserved for Scheduled Caste/ Scheduled Tribe category. He, therefore, submitted that the order passed by the School Tribunal as well as the Judgment passed by the learned Single Judge deserves to be

quashed and set aside. In the alternative he submitted that since the termination of the appellant was stayed by the Tribunal during the pendency of appeal he is entitled to receive salary from the respondents and as such in the event the appeal filed by him is dismissed liberty may be given to the appellant to file appropriate proceedings for recovery of the salary payable to the appellant during the pendency of the appeal before the Tribunal.

4. Having considered the submissions made by Mr. Mardikar, learned counsel for the appellant and having perused the records we find no merit in the present appeal. The findings given by the learned Single Judge that in the absence of specific pleading in the Memo of Appeal that the candidate belonging to Other Backward Class was entitled to be retained in service in the post reserved for Scheduled Caste/ Scheduled Tribes category is a finding based upon proper appreciation of the material on record and as such cannot be faulted. The appellant could not have set up the said defence for the first time in the Writ Petition filed against the order passed by the School Tribunal dismissing the appeal. If the appellant wanted to claim the benefit, he ought to have laid foundation in the Memo of Appeal filed by him especially giving opportunity to the respondents to deal

with the same on merits. The appellant not having done so, the findings given by the learned Single Judge against the appellant cannot be faulted. We, therefore, find no merit in the present appeal. Hence, the appeal deserves to be dismissed.

5. In so far as the liberty sought by the appellant to claim salary during the period the appeal was pending before the School Tribunal on account of the stay order granted by the School Tribunal is concerned the appellant may avail of any remedy, if available, in law.

For the reasons aforesaid, we find no merit in the present appeal. Consequently, the appeal stands dismissed in limine.

Judge **Judge**

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